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Lawrence H. Norton, Esquire
General Counsel
Federal Election Commission
999 E Street, NW
Washington, DC 20463

Re: Complaint

Dear Mr. Norton:

Enclosed please find an original and three copies of my Complaint alleging that Michael Moore, Lions Gate Entertainment Corp., Cablevision Systems Corporation, Rainbow Media Holdings LLC, The Independent Film Channel LLC, Fellowship Adventure Group, Harvey Weinstein, Bob Weinstein, Showtime Network, Inc. and Viacom International Inc. are about to violate various provisions of the Federal Election Campaign Act relating to electioneering communications.

Pursuant to the applicable filing requirements, the Complaint is sworn to and my signature thereon has been notarized.

Sincerely,

David N. Bossie
President

Enclosures

BEFORE THE FEDERAL ELECTION COMMISSION

IN THE MATTER OF:

Michael Moore,
Lions Gate Entertainment Corp.,
Cablevision Systems Corporation,
Rainbow Media Holdings LLC,
The Independent Film Channel LLC,
Fellowship Adventure Group,
Harvey Weinstein,
Bob Weinstein,
Showtime Network, Inc., and
Viacom International Inc.,

RESPONDENTS.

MUR NO. 5467

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COMPLAINT

Pursuant to 11 CFR § 111.4, the undersigned hereby files this Complaint with the Federal Election Commission ("Commission"), alleging as follows:

SUMMARY OF ALLEGATIONS

On information and belief, the undersigned alleges that planned advertising for the film FAHRENHEIT 9/11 violates the Federal Election Campaign Act ("FECA"). More specifically, the Complaint alleges that broadcast advertisements for the film, which include visual images and sound clips of President George W. Bush and other candidates for Federal elective office, qualify as "electioneering communications" under FECA if they are broadcast within 30 days prior to the Republican National Convention or 60 days prior to the general election. The undersigned contends that Respondents are about to violate the Act because the Ads will be funded by corporate and foreign money;

expenditures for the ads will not be reported to the Federal Election Commission; and the ads will not include the required disclosure statements.

The named Respondents in the Complaint include: Michael Moore, Lions Gate Entertainment Corp., Cablevision Systems Corporation, Rainbow Media Holdings LLC, The Independent Film Channel LLC, Fellowship Adventure Group, Harvey Weinstein, Bob Weinstein, Showtime Network, Inc. and Viacom International Inc

RELEVANT STATUTES & REGULATIONS

FECA defines an "electioneering communication" to include "any broadcast, cable or satellite communication which—

(I) refers to a clearly identified candidate for Federal office;

(II) is made within—

(aa) 60 days before a general, special, or runoff election for the office sought by the candidate; or

(bb) 30 days before a primary or preference election, or a convention or caucus of a political party that has authority to nominate a candidate, for the office sought by the candidate; and

(III) in the case of a communication which refers to a candidate for an office other than President or Vice President, is targeted to the relevant electorate.

2 U.S.C. § 434(f)(3)(A)(i); see also 11 CFR § 100.29(a).

FECA prohibits the use of corporate funds to pay for electioneering communications, 2 U.S.C. § 441b(2); and 11 CFR §§ 114.14(a) and (b), and also bars foreign nationals from "directly or indirectly" making "an expenditure, independent expenditure, or disbursement for an electioneering communication." 2 U.S.C. § 441e(a)(1)(C); see also 11 CFR § 11 CFR §§ 110.20 (e) and (i).

Persons who spend more than \$10,000 during a calendar year on electioneering communications are required to report their disbursements to the Federal Election

Commission within 24 hours of the date on which their aggregate expenditures exceed \$10,000. 2 U.S.C. §§ 434(f)(1) and (4); see also 11 CFR § 104.20. And any advertisement that qualifies as an electioneering communication must include a disclosure statement that includes:

the name and permanent street address, telephone number or World Wide Web address of the person who paid for the communication and state that the communication is not authorized by any candidate or candidate's committee.

2 U.S.C. § 441d(a)(3); see also 11 CFR § 110.11(b)(3).

FACTUAL ALLEGATIONS

On Information and belief, it is alleged as follows:

Respondents

1. Respondent **Michael Moore** ("Moore") is the director, writer and producer of a movie entitled FAHRENHEIT 9/11, which is highly critical of President George W. Bush and his leadership in the War on Terror.¹ Moore produced the work for use as a political weapon against President Bush in the November 2004 presidential election.

2. Respondent **Lions Gate Entertainment Corp.** ("Lions Gate") is a Canadian corporation that is publicly traded in the American Stock Exchange and Tokyo Stock Exchange under the symbol LGF.² Lions Gate has formed a partnership with certain other Respondents to market and distribute FAHRENHEIT 9/11 throughout the United States.

¹ See www.michaelmoore.com.

² See www.lionsgate-ent.com/CorpSite/investor_info.html.

3. Respondent **Cablevision Systems Corporation** is a New York-based corporation that is publicly traded on the New York Stock Exchange under the symbol CVC.³ Cablevision Systems Corporation's assets include Respondent **Rainbow Media Holdings LLC**,⁴ which, in turn, operates Respondent **The Independent Film Channel** ("IFC Films"),⁵ which has partnered with certain other Respondents to market and distribute FAHRENHEIT 9/11.

4. Respondent **Fellowship Adventure Group** is a "newly created special-purpose company" that recently acquired all rights to FAHREHHEIT 9/11 from Miramax Films.⁶

5. Respondents **Harvey Weinstein** and **Bob Weinstein** are the principals of Respondent Fellowship Adventure Group.⁷ The Weinstein brothers acquired the rights to FAHRENHEIT 9/11 after Walt Disney Co., owner of Miramax Films, declined to release the movie due to its blatantly political content.

6. Respondent **Showtime Network, Inc.** is a wholly owned subsidiary of Respondent **Viacom International Inc.**, a publicly traded Delaware Corporation that is listed on the New York Stock Exchange under the symbol "VIAB."⁸ According to a statement issued by Respondent Lions Gate, Showtime is "Lions Gate's Pay TV partner,"

³ See www.cablevision.com.

⁴ See www.rainbow-media.com/rainbow/index.jsp.

⁵ See www.ifctv.com/ifc/index.

⁶ See Lions Gate Press Release dated June 1, 2004, available at www.lionsgate-ent.com/CorpSite/investor_info.html. See also The Walt Disney Company Press Release dated May 28, 2004, available at www.disney.go.com/corporate/communications/releases/2004/index0.html.

⁷ See *Id.*

⁸ See www.sho.com/site/util/about.do; and www.viacom.com/shareholder.tin.

which will handle "Pay TV rights" for FAHRENHEIT 9/11.⁹ Showtime is owned by Respondent Showtime Network, Inc.¹⁰

Activities Giving Rise To Alleged FECA Violations

7. According to Daily Variety, a leading entertainment industry news journal, the movie FAHRENHEIT 9/11 is a "blatant cinematic 2004 campaign pamphlet."¹¹

8. Press reports state that Respondent Michael Moore produced FAHRENHEIT 9/11 for the express purpose of influencing the outcome of the 2004 Presidential election. CNN reported on May 24, 2004 that "Moore has said he wants 'Fahrenheit 9/11' to come out as soon as possible so that it will influence the November presidential election and send Bush back to Texas."¹² The Washington Dispatch states that "Moore openly hopes to influence the election" with the movie.¹³ Reuters, in a report on the film, quotes Moore as stating "George W. Bush has to be removed from office."¹⁴ And in an interview on ABC's "This Week" with George Stephanopoulos

⁹ See Lions Gate Press Release dated June 1, 2004, available at www.lionsgate-ent.com/CorpSite/investor_info.html.

¹⁰ See *Id.*

¹¹ "Fahrenheit 9/11", Daily Variety, May 18, 2004, p. 2.

¹² "H'wood hot for Moore's 'Fahrenheit 9/11,'" CNN.com, May 24, 2004, available at www.cnn.com/2004/SHOWBIZ/moview/05/24/film.reut.

¹³ "Michael Moore to Unleash 'Shock and Awe' before Election," The Washington Dispatch, May 18, 2004, available at www.washingtondispatch.com/culture/archives/000223.html.

¹⁴ "Michael Moore speaks on 'Fahrenheit 9/11,'" Reuters, May 19, 2004, available at www.sify.com/movies/hollywood/fullstory.php?id=12478204.

Moore acknowledged that his goal was the defeat of President Bush in the November 2004 elections, stating: "I would like to see Mr. Bush removed from the White House."¹⁵

10. Mr. Moore has also acknowledged that the film qualifies as political propaganda. In the interview with Mr. Stephanopoulos referenced in paragraph 9 of this Complaint, Moore stated: "I'm not trying to pretend that this is some sort of, you know, fair and balanced work of journalism."¹⁶

11. Due to its blatant political theme, The Walt Disney Company refused to allow its Miramax Films division to release the movie. Disney CEO Michael Eisner, said the company "did not want a film in the middle of the political process" because Disney is "a nonpartisan company and our guests, that participate in all of our attractions, do not look for us to take sides."¹⁷

12. After Disney refused to allow its Miramax Films unit to release the film, Respondents Harvey Weinstein and Bob Weinstein acquired the rights to FAHRENHEIT 9/11 under the auspices of a newly formed company called Fellowship Adventure Group.¹⁸

13. In May 2004, it was announced that Respondent Fellowship Adventure Group had formed a joint venture with Respondents Lions Gate and IFC Films to market and distribute FAHRENHEIT 9/11. According to a Loins Gate news release, the

¹⁵ See www.abcnews.go.com/sections/ThisWeek/Entertainment/michael_moore040620-1.html.

¹⁶ Id.

¹⁷ See "Eisner: Disney Won't Release Moore Movie," Associated Press, May 6, 2004, which is available at www.foxnews.com/story/0,2933,119182,00.html.

¹⁸ See Lions Gate Press Release dated June 1, 2004, available at www.lionsgate-ent.com/CorpSite/investor_info.html. See also The Walt Disney Company Press Release dated May 28, 2004, available at www.disney.go.com/corporate/communications/releases/2004/index0.html.

Weinstein brothers formed their venture as “a true coalition” to further Moore’s agenda. The Lions Gate statement quotes the brothers as stating: “The passion that Lions Gate, IFC Films and Showtime demonstrated reflects our desire to enable Michael Moore’s extraordinary work to be viewed by as many filmgoers as soon as possible.” The news release also says the Weinstein brothers expect others to soon join as partners in their “coalition.”¹⁹

14. According to the Lions Gate news release paid television rights for FAHRENHEIT 9/11 are being handled by Showtime. The statement described Showtime as “Lions Gate’s Pay TV partner.”²⁰

15. FAHRENHEIT 9/11 is scheduled to open nationally on June 25, 2004.²¹ The ongoing and future marketing campaign includes broadcast ads and the release of a trailer that includes references to and/or images of President Bush, Vice President Dick Cheney, U.S. Senator Byron L. Dorgan (D-ND) and other candidates for Federal elective office.²²

16. Ads for the film have been airing across the United States since on or before June 13, 2004.²³

¹⁹ See Lions Gate Press Release dated June 1, 2004, available at www.lionsgate-ent.com/CorpSite/investor_info.html.

²⁰ Id.

²¹ See Id.

²² See www.michaelmoore.com. Although this web site contains one version of the film’s broadcast advertisements, other ads featuring images and sound clips of President Bush are also being broadcast on television, cable and/or satellite facilities.

²³ Citizens United has acquired compilations of the dates, times, media markets and broadcast facilities that have run one or more of the film’s ads between June 13, 2004 and June 21, 2004, which are available upon request.

17. During the periods 30 days and less prior to the Republican National Convention (July 31, 2004 – September 2, 2004) and/or 60 days and less prior to general election day on November 2, 2004 (September 3, 2004 – November 2, 2004), one or more Respondents will pay a fee to broadcast FAHRENHEIT 9/11 ads that include visual and/or sound clips of President Bush and/or Vice President Dick Cheney on one or more television, cable or satellite facilities that can be viewed by 50,000 or more persons in the United States.

18. During the period 60 days or less prior to general election day on November 2, 2004 (September 3, 2004 - November 2, 2004), one or more Respondents will pay a fee to broadcast FAHRENHEIT 9/11 ads that include visual images and/or sound clips of Senator Byron L. Dorgan (D-ND), who is a candidate for re-election to the U.S. Senate this year. Said ads will be broadcast on television, cable and/or satellite facilities that can be viewed more than 50,000 persons in North Dakota.

19. Corporate funds and/or funds from one or more foreign nationals have and will be disbursed to pay for one or more of the broadcast ads referenced in paragraphs 15-18 of this Complaint.

20. Respondents have not and/or will not report their expenditures and sources of funding for the broadcast ads referenced in paragraphs 15-18 of this Complaint to the Federal Election Commission.

21. The broadcast ads referenced in paragraphs 15-18 of this Complaint do not include disclosure statements stating the name and permanent street address, telephone number or World Wide Web address of the person who paid for the

communication, nor do they state that the communication is not authorized by any candidate or candidate's committee.

LEGAL ANALYSIS

The foregoing facts establish a clear intent on the part of Respondents to soon violate FECA. In particular, the facts establish planned violations of FECA's ban on corporate funding and foreign funding of electioneering communications; the requirement of timely disclosure of electioneering communications in reports filed with the Commission; and the requirement that electioneering communications include a disclosure statement.

Film & Ads Qualify As Electioneering Communications

The payment of fees to broadcast advertisements that include the name or image of President Bush or Vice President Cheney qualify as electioneering communications if the ads are aired during the 30 days prior to the Republican National Convention or during the 60 days prior to the general election in November, and the ad(s) can be viewed by 50,000 or more persons in the United States.²⁴ See 2 U.S.C. § 434(f)(3); and 11 CFR §§ 100.29(a) and (b). And any ads broadcast within 60 days of the general election that include images of a U.S. House or U.S. Senate candidate, such as Senator Byron L. Dorgan (D-ND), would similarly qualify as electioneering communications if they can be viewed by 50,000 or more persons in any state or congressional district where the depicted federal candidate is running for election. Id.

²⁴ If any advertisements for the film contain images of, or references to, John Kerry or any other Democratic Party candidate for President, then any paid broadcast of those particular ads during the period 30 days and less prior to the Democratic National Convention (June 26, 2004 – July 29, 2004) that can be viewed by 50,000 persons in the United States will also qualify as an electioneering communication, provided \$10,000 or more is spent to produce and air the ads.

Unlawful Corporate Participation

Although FECA clearly and unambiguously prohibits the use of corporate funds to pay for electioneering communications, see 2 U.S.C. § 441(b)(2) and 11 CFR §§ 114.14(a) and (b), the facts cited in this Complaint demonstrate extensive corporate funding of the FAHRENHEIT 9/11 advertising campaign. Several of the partners in the distribution and marketing campaign are corporations. Lions Gate is a publicly traded corporation based in Canada. Another partner is IFC Films, which is operated by Rainbow Media Holdings LLC. Rainbow Media Holding LLC is an asset of Cablevision Systems Corporation. In addition, Lions Gate has partnered with Showtime to handle pay television rights for the movie. Showtime is owned by Showtime Network, Inc., which, in turn, is a wholly owned subsidiary of Viacom International Inc. Thus, corporate funding of the film's advertising campaign is obvious and extensive.

Unlawful Foreign Money & Participation In Election-Related Activities

Lions Gate's participation as a partner in FAHRENHEIT 9/11's marketing and distribution "coalition" is subject to FECA's ban on foreign funding of electioneering communications, see 2 U.S.C. § 441e; and 11 CFR § 110.20(e), and participation in election-related activities. See 2 U.S.C. § 441e; and 11 CFR § 110.20 (i). FECA and its implementing regulations, see 2 U.S.C. § 441e(b); and 11 CFR § 110.20(a)(3), define a foreign national by reference to 22 U.S.C. § 611(b), which, in turn, defines a foreign national to include a corporation organized under the laws of a foreign country. Lions Gate clearly falls within the definition of a foreign national under FECA because it is incorporated under the laws of Canada. As such, the entity is prohibited from either

directly or indirectly funding electioneering communications, or participating in any election-related activities in the United States.

Failure To Disclose

Although FECA requires the disclosure of electioneering communications to the Commission within 24 hours after the date on which \$10,000 or more has been spent on the communications, see 2 U.S.C. §§ 434(f)(1) and (2); and 11 CFR §104.20, Respondents have not indicated any intent to disclose future expenditures for the FAHRENHEIT 9/11 broadcast advertisements as electioneering communications.

Failure to Include Disclosure Statements

To date, Respondents broadcast ads have not included disclosure statements that identify the name, permanent street address, telephone number or World Wide Web address of the person who paid for the communication, nor do they include a statement that the communication is not authorized by any candidate or candidate's committee. See 2 U.S.C. § 441d(a)(3); and 11 CFR § 110.11(b)(3). Failure to include the required disclosure statements on electioneering communications constitutes a violation of FECA.

Press Exemption Does Not Apply

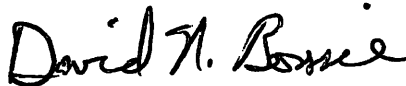
The broadcast advertisements referenced in this Complaint do not fall within FECA's press exemption. None of the ads qualify as news stories, commentaries or editorials that are distributed through the facilities of any broadcasting station, newspaper, magazine or other periodical publication. See 2 U.S.C. § 434(f)(3)(B)(i); and 11 CFR § 100.29(c)(2). FAHRENHEIT 9/11 is a "blatant cinematic 2004 campaign pamphlet," which was produced by Michael Moore's to further his goal of influencing the November presidential election and "send[ing] Bush back to Texas." The film and its

accompanying advertisements are not balanced works of journalism, as Moore appropriated admitted to ABC's George Stephanopoulos. In short the movie and its broadcast ads are pure political propaganda. Consequently, the ads do not fall within FECA's limited press exemption.²⁵

CONCLUSION

For the reasons set forth herein, the Commission should forthwith make a finding of reason to believe that violations of FECA are about to occur, see 11 CFR. § 111.9, and open an official investigation into the matters disclosed herein pursuant to 11 CFR § 111.10.

Respectfully Submitted,



David N. Bossie
President
Citizens United
1006 Pennsylvania Ave., SE
Washington, DC 20006
Tel. 202-547-5420
Fax. 202-547-5421
e-mail: davidbossie@citizensunited.org

DECLARATION UNDER OATH

Under penalty of perjury, David N. Bossie hereby declares that to the best of his knowledge, information and belief, the statements contained in the foregoing complaint are true.

Sworn to pursuant to 18 U.S.C. § 1001.

²⁵ If the Federal Election Commission determines that the ads at issue in this Complaint fall within FECA's press exemption, then any individual or coalition of individuals, corporation and un-incorporated entity, including a foreign national, which supports or opposes a federal candidate would be entitled to air similar advertisements under the guise of the press exemption.

David N. Bossie
David N. Bossie

City of Washington, DC

The foregoing instrument was subscribed and sworn
Before me this 24 day of June, 2004 by

David N. Bossie

Mary J. Vincent
Notary Public

My Commission expires 03-31-08